Dispute Settlement Update
January 30, 2003

I. WTO

A. Proceedings in which the United States is a plaintiff

1. Argentina—Patent and test data protection for pharmaceuticals and agricultural chemicals (WT/DS171, 196)

On May 6, 1999, the United States filed a consultation request challenging Argentina's failure to provide a system of exclusive marketing rights for pharmaceutical products, and to ensure that changes in its laws and regulations during its transition period do not result in a lesser degree of consistency with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"). Consultations were held on June 15, 1999, and again on July 27, 1999. On May 30, 2000, the United States expanded its claims in this dispute to include new concerns that have arisen as a result of Argentina's failure to fully implement its remaining TRIPS obligations that came due on January 1, 2000. These concerns include Argentina's failure to protect confidential test data submitted to government regulatory authorities for pharmaceuticals and agricultural chemicals; its denial of certain exclusive rights for patents; its failure to provide such provisional measures as preliminary injunctions to prevent infringements of patent rights; and its exclusion of certain subject matter from patentability. Consultations continued until April 16, 2002, when the two sides agreed to settle eight of the ten issues in the dispute. Argentina and the United States notified a settlement of these issues to the DSB on May 31, 2002. Consultations continue on the unresolved issues.

2. Belgium—Administration of measures establishing customs duties for rice (WT/DS210)

Belgian customs authorities have disregarded the actual transaction values of rice imported from the United States from July 1, 1997 to December 31, 1998, in computing the applicable customs duties. The United States believes that this failure to use transaction values contravenes Belgium's WTO obligations. By not using transaction values to compute customs duties Belgium has assessed duties on rice that are higher than the levels provided for in the "Schedule of Specific Commitments of the European Communities and Their Member States." Belgium's administration of its tariff regime for rice, moreover, has contributed to substantial uncertainty regarding the rate of duty that will be applicable to shipments of imported rice. On October 12, 2000, the United States requested consultations with Belgium regarding this matter, and consultations were held November 30, 2000. On January 19, 2001, the United States requested the establishment of a panel. The panel request was revised on March 1, and a panel was established on March 12, 2001. The following panelists were selected by the WTO Director-General: Ambassador Mohammed Nacer Benjelloun-Touimi, Chair; and Professor Donald MacLaren and Mr. Jooha Woo, Members. However, at the request of the parties, the panel did not commence its work, since discussions aimed at settlement were continuing. On November 19, 2001, Belgium issued a refund to the affected U.S. company for excess duties it had

collected. Accordingly, on December 18, 2001, the U.S. notified settlement of this dispute to the DSB.

3. Brazil—Measures on minimum import prices (WT/DS197)

The United States requested consultations on May 31, 2000, with Brazil regarding its customs valuation regime. U.S. exporters of textile products have reported that Brazil uses officially-established minimum reference prices both as a requirement to obtain import licenses and/or as a base requirement for import. In practice, this system works to prohibit the import of products with declared values below the established minimum prices. This practice appears inconsistent with Brazil's WTO obligations, including those under the Agreement on Customs Valuation. The United States participated as an interested third party in a dispute initiated by the EU regarding the same matter, and decided to pursue its own case as well. The United States held consultations with Brazil on July 18, 2000, and continues to monitor the situation.

4. Canada—Measures relating to exports of wheat and treatment of imported grain (WT/DS276)

On December 17, 2002, the United States requested consultations with Canada regarding trade in wheat. The United States believes that the wheat trading practices of the Canadian Wheat Board (CWB) are inconsistent with WTO disciplines governing the conduct of state-trading enterprises. The United States is also challenging as unfair and burdensome Canada's requirements to segregate imported grain in the Canadian grain handling system, along with Canada's discriminatory policy that affects U.S. grain access to Canada's rail transportation system. Consultations are scheduled for January 31, 2003.

5. Canada—Export subsidies and tariff-rate quotas on dairy products (WT/DS103)

The United States prevailed on its claim that Canada was providing subsidies to exports of dairy products without regard to its Uruguay Round commitment to reduce the quantity of subsidized exports, and was maintaining a tariff-rate quota on fluid milk under which it only permitted the entry of milk in retail-sized containers by Canadian residents for their personal use. On August 12, 1998, the following panelists were selected, with the consent of the parties, to review the U.S. claims: Professor Tommy Koh, Chairman; Mr. Guillermo Aguilar Alvarez and Professor Ernst-Ulrich Petersmann, Members. On May 17, 1999, the panel issued its report upholding U.S. arguments by finding that Canada's export subsidies are inconsistent with the Agreement on Agriculture, and that Canada's practice of restricting the import of milk to retail-sized containers imported by Canadian residents is inconsistent with its obligations under the GATT 1994. On October 13, 1999, the Appellate Body issued its report upholding the panel's finding that Canada's export subsidies are inconsistent with its GATT obligations. The panel and Appellate Body reports were adopted by the Dispute Settlement Body (DSB) on October 27, 1999. On December 22, 1999, the parties reached agreement on the time period for implementation by Canada. Under this agreement, Canada was to implement the DSB's recommendations and

rulings in stages; Canada has already implemented on some measures, and was to complete full implementation no later than January 31, 2001.

While Canada has eliminated one of the export subsidies subject to the DSB findings, all of its exporting provinces have instituted substitute measures that appear to duplicate most of the elements of the export subsidies which they replace. Information regarding the new measures indicates that only exporters have access to milk at prices that are below domestic market levels in Canada. Therefore, on February 16, 2001, the United States requested that the DSB reestablish the panel to review Canada's compliance measures. At the same time, the United States requested authorization to withdraw concessions benefitting goods from Canada if the panel agrees that Canada has failed to comply with rulings against it. The panel was reestablished on March 1, 2001, with Mr. Peter Palecka replacing Professor Koh, who was no longer available to serve, and with Professor Petersmann serving as Chairman. The panel found that the steps Canada took to implement the adverse rulings regarding its dairy export practices were insufficient and that Canada continues to subsidize its dairy exports at a level that is inconsistent with its WTO commitments. Canada appealed the panel's findings. On December 3, 2001, the Appellate Body concluded that it did not have enough facts to make a ruling against Canada. As a result, the United States requested that the panel be reconvened for the United States to present additional factual information. The three members of the panel, Mr. Petersmann (chair) and Mr. Alvarez and Mr. Palecka (members), agreed to serve again. On June 24, 2002, the panel found that Canada's new measures are WTO-inconsistent under the legal standard adopted by the Appellate Body. Canada appealed on September 23, 2002. On December 20, 2002, the Appellate Body issued a report affirming the panel's finding that Canada's new measures are WTO-inconsistent. The DSB adopted the panel and Appellate Body reports on January 17, 2003.

6. EC—Measures concerning meat and meat products (hormones) (WT/DS26, 48)

The United States and Canada challenged the EU ban on imports of meat from animals to which any of six hormones for growth promotional purposes had been administered. On July 2, 1996, the following panelists were selected, with the consent of the parties, to review the U.S. claims: Mr. Thomas Cottier, Chairman; Mr. Jun Yokota and Mr. Peter Palecka, Members. The panel found that the EU ban is inconsistent with the EU's obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"), and that the ban is not based on science, a risk assessment, or relevant international standards. Upon appeal, the Appellate Body affirmed the panel's findings that the EU ban fails to satisfy the requirements of the SPS Agreement. The Appellate Body also found that while a country has broad discretion in electing what level of protection it wishes to implement, in doing so it must fulfill the requirements of the SPS Agreement. In this case the ban imposed is not rationally related to the conclusions of the risk assessments the EU had performed.

Because the EU did not comply with the recommendations and rulings of the DSB by May 13, 1999, the final date of its compliance period as set by arbitration, the United States sought WTO

authorization to suspend concessions with respect to certain products of the EU, the value of which represents an estimate of the annual harm to U.S. exports resulting from the EU's failure to lift its ban on imports of U.S. meat. The EU exercised its right to request arbitration concerning the amount of the suspension. On July 12, 1999, the arbitrators determined the level of suspension to be $116.8 million. On July 26, 1999, the DSB authorized the United States to suspend such concessions and the United States proceeded to impose 100 percent *ad valorem* duties on a list of EU products with an annual trade value of $116.8 million. On May 26, 2000, USTR announced that it was considering changes to that list of EU products. While discussions with the EU to resolve this matter are continuing, no resolution has been achieved yet. On November 3, 2000, the EU notified the WTO of its plans to make permanent the ban on one hormone, oestradiol.

7. EC—Protection of trademarks and geographical indications for agricultural products and foodstuffs (WT/DS174)

EU Regulation 2081/92, as amended, does not provide national treatment with respect to geographical indications for agricultural products and foodstuffs; it also does not provide sufficient protection to pre-existing trademarks that are similar or identical to such geographical indications. The United States considers this measure inconsistent with the EU's obligations under the TRIPS Agreement. The United States requested consultations regarding this matter on June 1, 1999. Consultations were first held July 9, 1999, and have continued on an informal basis.

8. EC–Provisional safeguard measures on imports of certain steel products (WT/DS260)

On May 30, 2002, the United States filed a consultation request with respect to the EU's provisional safeguard measures against certain steel products, imposed effective on March 29, 2002. These measures appear to be inconsistent with the EC's obligations under the provisions of the GATT 1994 and of the WTO Agreement on Safeguards, and, in particular, Article XIX of the GATT 1994 and Articles 2, 3, 4, 6, and 12 of the Agreement on Safeguards. These provisions provide, inter alia, that a provisional safeguard measure may only be applied in critical circumstances where delay would cause damage difficult to repair, and only pursuant to a preliminary determination that there is clear evidence that increased imports have caused or threaten to cause serious injury. One round of consultations was held on June 27, 2002, and a second round was held on July 24, 2002. The United States requested the establishment of a panel on August 19, 2002, and the DSB established a panel on September 16, 2002.

9. India—Measures affecting trade and investment in the motor vehicle sector (WT/DS175)

In order to obtain import licenses for certain motor vehicle parts and components, India requires manufacturing firms in the motor vehicle sector to achieve specified levels of local content, to neutralize foreign exchange by balancing the value of certain imports with the value of exports of cars and components over a stated period, and to limit imports to a value based on the previous

year's imports. Considering these requirements inconsistent with India's obligations under the GATT 1994 and the Agreement on Trade-related Investment Measures ("TRIMs Agreement"), the United States requested consultations on June 2, 1999. Consultations were held July 20, 1999. The matter remained unresolved following consultations and, on May 15, 2000, the United States requested the establishment of a panel. A panel was established on July 27, 2000, and on November 17, 2000, that panel was merged with a panel established at the request of the EU regarding the same matter. On November 24, 2000, at the request of the complaining parties, the Director-General selected the following panelists to serve in this dispute: Mr. John Weekes, Chairman; Ms. Gloria Peña and Mr. Jeffrey Waincymer, Members. On December 21, 2001, the panel issued its report. The panel found that the measures in question were inconsistent with India's obligations under GATT Articles III:4 and XI:1, and it recommended that India bring the measures into compliance with its obligations. The panel exercised judicial economy and did not reach the claims made under the TRIMs Agreement. India appealed the panel report on January 31, 2002, then withdrew its appeal on March 14, 2002. The Appellate Body issued a report on March 19 acknowledging India's withdrawal. The DSB adopted the panel and Appellate Body reports on April 5, 2002. India stated its intention to implement the recommendations and rulings of the DSB at the DSB meeting on May 22, 2002. On July 22, 2002, the parties notified the DSB that they had agreed that the deadline for India to implement the recommendations and rulings of the DSB is September 5, 2002. India notified the DSB on November 11, 2002, that it had fully implemented the DSB's recommendations and rulings.

10. Japan - Measures affecting the importation of apples (WT/DS245)

On March 1, 2002, the United States requested consultations with Japan regarding Japan's quarantine restrictions on U.S. apples imported into Japan to protect against introduction of fire blight (*Erwinia amylovora*). These restrictions include, *inter alia*, the prohibition of imported apples from orchards in which any fire blight is detected, the requirement that export orchards be inspected three times yearly for the presence of fire blight, the disqualification of any orchard from exporting to Japan should fire blight be detected within a 500 meter buffer zone surrounding such orchard, and a post-harvest treatment of exported apples with chlorine. The United States considers these measures to be inconsistent with Japan's obligations under the GATT 1994, the SPS Agreement, and the Agreement on Agriculture. Japan's measures also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements. Consultations were held on April 18, 2002, but failed to resolve the matter. On May 7, 2002, the United States requested the establishment of a panel. The DSB established the panel on June 3, 2002. The panel is composed of: Mr. Michael Cartland, Chairman, and Mr. Christian Haeberli, Member (selected by mutual agreement of the parties); and Ms. Kathy-Ann Brown (selected by the Director-General), Member.

11. Mexico—Antidumping investigation of high fructose corn syrup from the United States (WT/DS101)

On January 28, 2000, a WTO panel ruled that Mexico's imposition of antidumping duties on U.S. imports of high fructose corn syrup ("HFCS") was inconsistent with the requirements of the Antidumping Agreements in several respects. The panel, which was composed on January 13, 1999, with the consent of the parties, included: Mr. Christer Manhusen, Chairman; Mr. Gerald Salembier and Mr. Edwin Vermulst, Members. Mexico had begun this antidumping investigation based on a petition by the Mexican sugar industry. The United States successfully demonstrated that Mexico's threat of injury determination and imposition of provisional and final antidumping duties was flawed. Mexico did not appeal, and the panel report was adopted on February 24, 2000. On April 10, Mexico agreed to implement the panel recommendation by September 22, 2000. On September 20, 2000, Mexico announced that it has conformed to the panel's recommendations and rulings by redetermining that there was a threat of injury to the domestic sugar industry and maintaining the subject antidumping duties, while at the same time determining that the provisional amounts paid from June 26, 1997, to January 23, 1998, would be refunded with interest. The United States, however, disagrees that such action results in full implementation of the panel's recommendations and rulings. Therefore, on October 12, 2000, the United States requested that the panel be reconvened to examine this matter. The panel was established on October 23, 2000, for that purpose, with Mr. Paul O'Connor replacing Mr. Vermulst, who no longer was available to serve. In a report released on June 22, 2001, the panel agreed with the United States that Mexico had failed to cure the flaws already found in its original determination. Mexico appealed that finding. The Appellate Body released its report on October 22, 2001, in which it agreed with the panel's findings. The Appellate Body and panel reports were adopted on November 21, 2001.

12. Mexico—Measures affecting trade in live swine (WT/DS203)

On July 10, 2000, the United States requested consultations with Mexico regarding Mexico's October 20, 1999, definitive antidumping measure involving live swine from the United States as well as sanitary and other restrictions imposed by Mexico on imports of live swine weighing more than 110 kilograms. The United States considers that Mexico made a determination of threat of material injury that appears inconsistent with the Antidumping Agreement, and that other actions by Mexico in the conduct of its investigation are also in violation of the Agreement. In addition, the United States considers that, by maintaining restrictions on the importation of live swine weighing 110 kilograms or more, Mexico was acting contrary to its obligations under the Agreement on Agriculture, the SPS Agreement, the Agreement on Technical Barriers to Trade ("TBT Agreement"), and the GATT 1994. Consultations were held September 7, 2000. Subsequent to the consultations, Mexico issued a protocol which has allowed a resumption of U.S. shipments of live swine weighing 110 kilograms or more into Mexico. At about the same time, Mexico self-initiated a review of its threat of injury determination based on information, including a shortage of slaughter hogs, that suggests that market conditions have changed substantially in Mexico.

13. Mexico—Measures affecting telecommunications services (WT/DS204)

On August 17, 2000, the United States requested consultations with Mexico regarding its commitments and obligations under the General Agreement on Trade in Services (``GATS") with respect to basic and value-added telecommunications services. The U.S. consultation request covered a number of key issues, including the Government of Mexico's failure to (1) maintain effective disciplines over the former monopoly, Telmex, which is able to use its dominant position in the market to thwart competition; (2) ensure timely, cost-oriented interconnection that would permit competing carriers to connect to Telmex customers to provide local, long-distance, and international service; and (3) permit alternatives to an outmoded system of charging U.S. carriers above-cost rates for completing international calls into Mexico.

These consultations, which were held on October 10, 2000, provided helpful clarifications but did not resolve the dispute. Therefore, on November 10, 2000, filed a request for the establishment of a panel as well as an additional request for consultations on Mexico's newly issued measures. Those consultations were held on January 16, 2001. At that time, the United States decided not to pursue its panel request further given progress subsequently achieved in Mexico's domestic telecommunications market. For instance, Mexico reduced domestic interconnection rates and introduced measures to regulate Telmex as a dominant carrier. However, Mexico has taken no steps to address U.S. concerns regarding the anti-competitive nature of its international telecommunications regime, including the exorbitant interconnection rates that Telmex charges U.S. operators to complete calls into Mexico. Therefore, on February 13, 2002, the United States filed a new request for a panel to examine these unresolved issues. The panel was established on April 17, 2002. On August 26, 2002, the following panelists were selected: Mr. Ernst-Ulrich Petersmann, Chairman; Mr. Raymond Tam and Mr. Björn Wellenius, Members.

14. Philippines—Measures affecting trade and investment in the motor vehicles sector (WT/DS195)

On May 24, 2000, the United States requested consultations with the Philippines regarding measures affecting trade and investment in the motor vehicle sector (*i.e.*, automobiles, motorcycles and commercial vehicles). Among other things, the measures require producers to incorporate specified amounts of locally-produced inputs, precluding the purchase of U.S. parts. There is also a requirement that imports be balanced in an amount related to a company's foreign exchange earnings. These measures substantially restrict the sale of U.S. motor vehicle parts and inhibit the free flow of trade and investment, which appear to violate the TRIMs Agreement. Under WTO rules, the Philippines was required to remove these measures by January 1, 2000, but recently requested an extension of five years pursuant to the TRIMs Agreement to bring these measures into WTO compliance. Consultations were held July 12, 2000. On October 12, 2000, the United States requested the establishment of a panel. A panel was established on November 17, 2000, but at the parties' request it was not composed because settlement discussions are continuing. An agreement to settle this dispute was concluded on December 18, 2001.

15. Venezuela—Import Licensing Measures on Certain Agricultural Products (WT/DS275)

On November 7, 2002, the United States requested consultations with Venezuela regarding import licensing measures on certain agricultural products. Venezuela has established import licensing and permit requirements for numerous agricultural products that appear to establish a discretionary import licensing regime, and that fail to establish a transparent and predictable system for issuing import licenses. These measures severely restrict and distort trade in these goods, and appear to be in violation of provisions of the Agreement on Agriculture, the GATT 1994, and the Import Licensing Agreement. Consultations were held November 26, 2002.

B. Proceedings in which the United States is a defendant

1. United States—Tax treatment for "foreign sales corporations ("FSC") (WT/DS108)

The EU challenged the FSC provisions of the U.S. tax law, claiming that the provisions constitute prohibited export subsidies and import substitution subsidies under the Subsidies Agreement, and that they violate the export subsidy provisions of the Agreement on Agriculture. A panel was established on September 22, 1998. On November 9, 1998, the following panelists were selected, with the consent of the parties, to review the EU claims: Mr. Crawford Falconer, Chairman; Mr. Didier Chambovey and Mr. Seung Wha Chang, Members. The panel found that the FSC tax exemption constitutes a prohibited export subsidy under the Subsidies Agreement, and also violates U.S. obligations under the Agreement on Agriculture. The panel did not make findings regarding the FSC administrative pricing rules or the EU's import substitution subsidy claims. The panel recommended that the United States withdraw the subsidy by October 1, 2000. The panel report was circulated on October 8, 1999 and the United States filed its notice of appeal on November 26, 1999. The Appellate Body circulated its report on February 24, 2000. The Appellate Body upheld the panel's finding that the FSC tax exemption constitutes a prohibited export subsidy under the Subsidies Agreement, but, like the panel, declined to address the FSC administrative pricing rules or the EU 's import substitution subsidy claims. While the Appellate Body reversed the panel's findings regarding the Agreement on Agriculture, it found that the FSC tax exemption violated provisions of that Agreement other than the ones cited by the panel. The panel and Appellate Body reports were adopted on March 20, 2000, and on April 7, 2000, the United States announced its intention to respect its WTO obligations. On November 15, 2000, the President signed legislation that repealed and replaced the FSC provisions, but the EU claimed that the new legislation failed to bring the US into compliance with its WTO obligations.

In anticipation of a dispute over compliance, the United States and EU reached agreement in September 2000 on the procedures to review U.S. compliance with the WTO recommendations and rulings. Pursuant to a request approved by the WTO, the deadline for U.S. compliance was changed from October 1, 2000, as recommended by the panel, to November 1, 2000. The procedural agreement also outlined certain procedural steps to be taken after passage of US

legislation to replace the FSC. The essential feature of the agreement provided for sequencing of WTO procedures as follows: (1) a panel would determine the WTO-consistency of FSC replacement legislation (the parties retained the right to appeal); (2) only after the appeal process was exhausted would arbitration over the appropriate level of retaliation be conducted if the replacement legislation was found WTO-inconsistent. Pursuant to the procedural agreement, on November 17, the EU requested authority to impose countermeasures and suspend concessions in the amount of $4.043 billion. On November 27, the United States objected to this amount, thereby referring the matter to arbitration, which was then suspended pending a review of the legislation's WTO-consistency. On December 7, the EU requested establishment of a panel to review the legislation, and the panel was reestablished for this purpose on December 20, 2000. In a report circulated on August 20, 2001, the panel found that the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 does not bring the United States into conformity with its WTO obligations. The United States appealed the panel ruling on October 15, 2001. On January 14, 2001, the Appellate Body affirmed the findings of the panel. On January 29, 2002, the panel and Appellate Body reports were adopted, and the suspended arbitration to determine the amount of concessions was reactivated, with the original panelists serving as the arbitration panel pursuant to the procedural agreement. The arbitration panel circulated its report on August 30, 2002, and found that the EU was entitled to impose trade sanctions in the amount of $4.043 billion.

2. United States—Antidumping Act of 1916 (WT/DS136, 162)

Title VII of the Revenue Act of 1916 (15 U.S.C. §§ 71-74, entitled "Unfair Competition"), often referred to as the Antidumping Act of 1916, allows for private claims against, and criminal prosecutions of, parties that import or assist in importing goods into the United States at a price substantially less than the actual market value or wholesale price. On April 1, 1999, the following panelists were selected, with the consent of the parties, to review the EU claims: Mr. Johann Human, Chairman; Mr. Dimitrij Grĕar and Mr. Eugeniusz Piontek, Members. On January 29, 1999, the panel found that the 1916 Act is inconsistent with WTO rules because the specific intent requirement of the Act does not satisfy the material injury test required by the Antidumping Agreement. The panel also found that civil and criminal penalties in the 1916 Act go beyond the provisions of the Antidumping Agreement. The panel report was circulated on March 31, 2000. Separately, Japan sought its own rulings on the same matter from the same panelists; that report was circulated on May 29, 2000. On the same day, the United States filed notices of appeal for both cases, which were consolidated into one Appellate Body proceeding. The Appellate Body report, issued August 28, 2000, affirmed the panel reports. This ruling, however, has no effect on the U.S. antidumping law, as codified in the Tariff Act of 1930, as amended. The panel and Appellate Body reports were adopted by the DSB on September 26, 2000. On November 17, 2000, the EU and Japan requested arbitration to determine the period of time to be given the United States to implement the panel's recommendation. By mutual agreement of the parties, Mr. A.V. Ganesan was appointed to serve as arbitrator. On February 28, 2001, he determined that the deadline for implementation was July 26, 2001. On July 24, the DSB approved a U.S. proposal to extend the deadline until the earlier of the end of the then-

current session of the U.S. Congress or December 31, 2001. Legislation to repeal the Act and extinguish cases pending under the Act was introduced in the House on December 20, 2001, but no action was taken. On January 17, 2002, the U.S. referred the matter to arbitration in response to proposals by the EU and Japan to suspend concessions. On February 20, the following arbitration panel was selected by mutual agreement of the parties: Mr. Dimitrij Grcar, Chair; Mr. Brendan McGivern and Mr. Eugeniusz Piontek, Members. At the request of the United States, the panel suspended its work on March 4, in light of on-going efforts to resolve the dispute.

3. United States—Section 110(5) of U.S. Copyright Act (WT/DS160)

As amended in 1998 by the Fairness in Music Licensing Act, section 110(5) of the U.S. Copyright Act permits certain retail establishments to play radio or television music without paying royalties to songwriters and music publishers. The EU claimed that, as a result of this exception, the United States is in violation of its TRIPS obligations. Consultations with the EU took place on March 2, 1999. A panel on this matter was established on May 26, 1999. On August 6, 1999, the Director-General composed the panel as follows: Ms. Carmen Luz Guarda, Chair; Mr. Arumugamangalam V. Ganesan and Mr. Ian F. Sheppard, Members. The panel issued its final report on June 15, 2000, and found that one of the two exemptions found in section 110(5) is inconsistent with the United States' WTO obligations. The panel report was adopted by the DSB on July 27, 2000, and the United States informed the DSB of its intention to respect its WTO obligations. On October 23, 2000, the EU requested arbitration to determine the period of time to be given the United States to implement the panel's recommendation. By mutual agreement of the parties, Mr. J. Lacarte-Muró was appointed to serve as arbitrator. He determined that the reasonable period of time for implementation would expire on July 27, 2001. On July 24, the DSB approved a U.S. proposal to extend the reasonable period of time for implementation until the earlier of the end of the then-current session of the U.S. Congress or December 31, 2001.

On July 23, 2001, the United States and the EU requested arbitration to determine the level of nullification or impairment of benefits accruing to the EU as a result of Section 110(5)(B). The arbitration panel was composed by the Director-General as follows: Mr. Ian F. Sheppard, Chair; Ms. Margaret Liang and Mr. David Vivas-Eugui, Members. In a decision circulated to WTO Members on November 9, 2001, the arbitrators determined that the value of the benefits lost to the EU in this case is $1.1 million.

On January 7, 2002, the EU requested authorization to suspend certain WTO obligations because the United States had not implemented the recommendations of the DSB. The United States objected to the request on January 17, 2002, and the matter was referred to arbitration. The parties agreed that the arbitration should be carried out by the same individuals that served in the earlier arbitration proceeding in the case. On February 27, 2002, the panel suspended the arbitration at the joint request of the U.S. and the EU, in light of ongoing efforts to resolve the issue.

4. United States—Section 211 Omnibus Appropriations Act of 1998 (WT/DS176)

Section 211 addresses the ability to register or enforce, without the consent of previous owners, trademarks or trade names associated with businesses confiscated without compensation by the Cuban government. The EU questions the consistency of Section 211 with the TRIPS Agreement, and it requested consultations on July 7, 1999. Consultations were held September 13 and December 13, 1999. On June 30, 2000, the EU requested a panel. A panel was established on September 26, 2000, and at the request of the EU the WTO Director-General composed the panel on October 26, 2000, as follows: Mr. Wade Armstrong, Chairman; Mr. François Dessemontet and Mr. Armand de Mestral, Members. The panel report was circulated on August 6, 2001, rejecting 13 of the EU's 14 claims and finding that, in most respects, section 211 is not inconsistent with the obligations of the United States under the TRIPS Agreement. The EU appealed the panel report on October 4, 2001. The Appellate Body issued its report on January 2, 2002. The Appellate Body reversed the panel's one finding against the United States, and upheld the panel's favorable findings that WTO members are entitled to determine trademark and trade name ownership criteria. The Appellate Body found certain instances, however, in which section 211 might breach national treatment and most favored nation obligations of the TRIPs Agreement. The Appellate Body and panel reports were adopted on February 1, 2002, and the United States informed the DSB of its intention to respect its WTO obligations. The EU and the U.S. have agreed that the reasonable period of time for implementation will expire on June 30, 2003.

5. United States—Antidumping measures on certain hot-rolled steel products from Japan (WT/DS184)

Japan alleged that the preliminary and final determinations of the Department of Commerce and the USITC in their antidumping investigations of certain hot-rolled steel products from Japan, issued on November 25 and 30, 1998, February 12, 1999, April 28, 1999, and June 23, 1999, were erroneous and based on deficient procedures under the U.S. Tariff Act of 1930 and related regulations. Japan claimed that these procedures and regulations violate the GATT 1994, as well as the Antidumping Agreement. Consultations were held on January 13, 2000, and a panel was established on March 20, 2000. In May 1999, the Director-General composed the panel as follows: Mr. Harsha V. Singh, Chairman; Mr. Yanyong Phuangrach and Ms. Lidia di Vico, Members. On February 28, 2001, the panel circulated its report, in which it rejected most of Japan's claims, but found that particular aspects of the antidumping duty calculation were inconsistent with the WTO Antidumping Agreement. On April 25, 2001, the United States filed a notice of appeal on certain issues in the panel report. The Appellate Body report was issued on July 24, 2001, reversing in part and affirming in part. On September 10, 2001, at a meeting of the DSB, the United States stated its intention to implement the recommendations and rulings of the DSB in a manner that respects U.S. WTO obligations, and that it would need a reasonable period of time in which to do so. The United States and Japan were unable to reach agreement on a reasonable period of time for compliance, and on November 20, 2001, Japan referred the question to arbitration. By mutual agreement of the parties, Mr. Florentino P. Feliciano was

appointed to serve as arbitrator. On February 19, 2002, he determined that the reasonable period of time for implementation will expire on November 23, 2002. On December 5, 2002, the DSB agreed to extend the reasonable period of time for implementation until December 31, 2003, or the end of the first session of Congress, whichever is earlier.

6. United States—Transitional safeguard measure on combed cotton yarn from Pakistan (WT/DS192)

This dispute involved a transitional safeguard measure applied by the United States from March 17, 1999, on imports of combed cotton yarn from Pakistan. The WTO Textiles Monitoring Body ("TMB") reviewed this matter during 1999. When the matter was not resolved in the TMB, on April 3, 2000, Pakistan requested the establishment of a panel, which was established on June 19, 2000. On August 30, 2000, the following panelists were selected with the consent of the parties: Mr. Wilhelm Meier, Chairman; Mr. Carlos Antônio da Rocha Paranhos and Mr. Virachai Plasai, Members. On May 31, 2001, the panel report was circulated, finding that the U.S. measure was inconsistent with the WTO Agreement on Textiles and Clothing. The United States filed an appeal with the WTO Appellate Body. On October 8, 2001, the Appellate Body released its report, which affirmed the panel's finding of inconsistency, but importantly ruled that the panel exceeded its mandate by considering evidence that was not in existence at the time that the U.S. Committee on Implementation of Textile Agreements ("CITA") established the safeguard. The DSB adopted the Appellate Body report on November 5, 2001. The United States removed its restrictions on yarn from Pakistan effective on November 9, 2001, and on November 21, 2001, notified the DSB that it had implemented the WTO recommendation.

7. United States—Definitive safeguard measures on imports of circular welded carbon quality line pipe from Korea (WT/DS202)

On June 13, 2000, Korea requested consultations regarding safeguard measures imposed by the United States on imports of circular welded carbon quality line pipe. These measures were proclaimed by the United States on February 18, 2000, and introduced on March 1, 2000. Korea argued that such measures are inconsistent with the Agreement on Safeguards and the GATT 1994. Consultations were held July 28, 2000. On September 14, 2000, Korea requested the establishment of a panel. A panel was established on October 23, 2000, and composed of the following panelists: Mr. Dariusz Rosati, Chairman (selected by the Director-General); Robert Azevedo and Eduardo Bianchi, Members (selected by mutual agreement of the parties). The panel report was circulated on October 29, 2001. The panel found that the U.S. measure violates the Safeguards Agreement, but at the same time rejected several of Korea's claims related to both the measure itself and the investigation. Further, the panel agreed that the United States could exclude imports from its NAFTA partners, Canada and Mexico, from the line pipe measure.

The United States appealed this decision on November 19, 2001. On November 26, 2001, Korea appealed the issues that it lost before the panel.

The Appellate Body issued its report on February 15, 2002. It found in favor of the United States in concluding that the U.S. International Trade Commission (ITC) Commissioners need not agree on whether their affirmative determination is based on serious injury or threat of serious injury, that the United States need not explain how it complied with WTO rules at the time of taking a safeguard measure, and that the Panel had not adopted a *per se* rule that the causation standard under Section 201 of the Trade Act of 1974 is inconsistent with WTO rules.

The Appellate Body found against the United States for not providing an adequate opportunity for consultations with trading partners before imposing its safeguard measure, for not guaranteeing that low-volume developing country exporters would be excluded from the safeguard measure in all foreseeable circumstances, for not determining the "nature and extent" of injury attributable to increased imports as opposed to other factors, and for not proving before the Panel that the safeguard measure was applied no more than the extent necessary to remedy the injury caused by increased imports, and not injury caused by other factors. The DSB adopted the panel and Appellate Body reports on March 8, 2002. The United States announced its intention to comply with the Appellate Body report at the April 5, 2002, meeting of the DSB. On April 29, 2002, Korea referred the question of the reasonable period of time for compliance to arbitration. On July 29, the United States and Korea notified the DSB that they had agreed that the reasonable period of time to comply with the recommendations and rulings of the DSB would end on September 1, 2002. They also agreed that, after that time, the United States would increase the volume of Korean line pipe exempt from the safeguard from 9,000 tons per year to 17,500 tons per quarter.

8. United States—Antidumping measures and countervailing measures on steel plate from India (WT/DS206)

India filed this case in response to the U.S. antidumping order on steel plate from India. India requested consultations with the United States regarding this matter on October 4, 2000. The United States and India held consultations on November 21, 2000, and a panel was established at India's request on July 24, 2001. The panel is composed of Mr. Timothy Groser, Chair, and Ms. Salmiah Ramli, Member (selected by mutual agreement of the parties); and Ms. E. Luz Reyes, Member (selected by the Director-General). India raised four claims in its case, challenging the WTO-consistency of the U.S. "facts available" provisions; U.S. facts available "practice;" the Department of Commerce's treatment of India as a developing country under Article 15 of the Antidumping Agreement; and the Department of Commerce's decision to use total "facts available" to calculate a margin for the Indian respondent company. The Panel circulated its report on June 28, 2002. It rejected the first three claims that India raised. On the fourth claim, the Panel disagreed with both the U.S. and the Indian interpretations of the AD Agreement provisions at issue. It concluded that Commerce had acted inconsistently with the relevant provisions by not providing an adequate basis for its actions. The Panel declined India's request for specific recommendations for implementing the Panel's decision. The DSB adopted the report of the panel on July 29, 2002. The United States announced its intention to comply with

the panel's report on August 27, 2002. The United States and India agreed that the reasonable period of time to implement the DSB's recommendations and rulings would end on January 31, 2003.

9. United States—Countervailing duty measures concerning certain products from the European Communities (WT/DS212)

On November 13, 2000, the EU requested WTO dispute settlement consultations concerning determinations made in various U.S. countervailing duty (CVD) proceedings covering imports from member states of the EU, all such determinations involving the Department of Commerce's "change in ownership" (or "privatization") methodology. Previously, the EU had successfully challenged Commerce's methodology in a WTO dispute concerning leaded steel products from the UK. Consultations were held December 7, 2000. Further consultations were requested on February 1, 2001, and held on April 3. Eventually, the EU requested the establishment of a panel with respect to determinations in 12 CVD determinations involving imported steel products from EU member states. The EU's challenged the continued application of the methodology at issue in the UK leaded steel products case, as well as the new methodology devised by Commerce to replace it. A panel was established on September 10, 2001, and at the request of the EU the WTO Director-General composed the panel on November 5, 2001, as follows: Mr. Gilles Gauthier, Chairman; Ms. Marie-Gabrielle Ineichen-Fleisch and Mr. Michael Mulgrew, Members. In its final report, issued July 31, 2002, the panel found both the old and new Commerce privatization methodologies to be inconsistent with the WTO Subsidies Agreement. In addition, the panel found section 771(5)(F) of the Tariff Act of 1930 – the "privatization" provision in the CVD statute – to be WTO-inconsistent based on its conclusion that the provision precludes Commerce from acting in a WTO-consistent manner. The United States appealed the report on September 9, 2002. The Appellate Body issued its report on December 9, 2002. The Appellate Body affirmed the panel's finding that Commerce's methodology is inconsistent with the Subsidies Agreement, but disagreed with some of the panel's reasoning. In particular, the Appellate Body disagreed with the panel that an arm's length sale of a government-owned firm for fair market value always extinguishes prior subsidies. Instead, according to the Appellate Body, such a transaction creates merely a rebuttable presumption that prior subsidies are extinguished. The DSB adopted the panel and Appellate Body reports on January 8, 2003. The United States stated its intention to implement the DSB recommendations and rulings on January 27, 2003.

10. United States—Countervailing duties on certain corrosion-resistant carbon steel flat products from Germany (WT/DS213)

Also on November 13, 2000, the EU requested dispute settlement consultations with respect to the Department of Commerce's countervailing duty order on certain corrosion-resistant flat rolled steel products from Germany. In a "sunset review", the Department of Commerce declined to revoke the order based on a finding that subsidization would continue at a rate of 0.54 percent. The EU alleges that this action violates the Subsidies Agreement, asserting that countervailing duty orders must be revoked where the rate of subsidization found is less than the 1 percent de

minimis standard for initial countervailing duty investigations. The United States and the EU held consultations pursuant to this request on December 8, 2000. A second round of consultations was held on March 21, 2001. A panel was established at the EU's request on September 10, 2001. The panel is composed of: Mr. Hugh McPhail, Chair, and Mr. Wieslaw Karsz, Member (selected by agreement of the parties); and Mr. Ronald Erdmann, Member (selected by the Director-General). The panel circulated its report on July 3, 2002. In its report, the panel found that the U.S. system of automatically self-initiating sunset reviews is WTO-consistent and that U.S. law, as such, is not inconsistent with the obligation to determine whether future subsidization is likely. However, the panel found that Commerce's failure to apply the 1 percent de minimis standard for CVD investigations to sunset reviews is WTO-inconsistent. The panel also found that Commerce's decision in the German steel sunset review was overly simplistic and lacked a sufficient factual basis. The United States appealed the report on August 30, 2002.

On November 28, 2002, the Appellate Body issued its report. The Appellate Body affirmed the findings of the panel that the EU had appealed, and reversed the panel's finding regarding the de minimis standard that the U.S. had appealed. The DSB adopted the panel and Appellate Body reports on December 19, 2002. The United States stated its intention to implement the DSB recommendations on January 17, 2003.

11. United States—Definitive safeguard measures on imports of steel wire rod and circular welded quality line pipe (WT/DS214)

On December 1, 2000, the EU requested consultations with the United States regarding U.S. safeguard measures on imports of circular welded carbon quality line pipe and on wire rod. The EU argued that these measures are inconsistent with the Agreement on Safeguards and the GATT 1994. The EU also claimed that certain aspects of the underlying U.S. safeguards legislation – Sections 201 and 202 of the Trade Act of 1974 – and Section 311 of the NAFTA Implementation Act prevented the United States from respecting certain provisions of the Agreement on Safeguards and the GATT 1994. Consultations were held on January 26, 2001, and informal consultations continued thereafter. A panel was established at the EU's request on September 10, 2001, but the panel will examine only the safeguard measure on line pipe.

12. United States—Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA") (WT/DS/217, 234)

On December 21, 2000, Australia, Brazil, Chile, the EU, India, Indonesia, Japan, Korea, and Thailand requested consultations with the United States regarding the Continued Dumping and Subsidy Offset Act of 2000 (19 USC 754), which amended Title VII of the Tariff Act of 1930 to transfer import duties collected under U.S. antidumping and countervailing duty orders from the U.S. Treasury to the companies that filed the antidumping and countervailing duty petitions. Consultations were held on February 6, 2001. On May 21, 2001, Canada and Mexico also

requested consultations on the same matter, which were held on June 29, 2001. On July 12, 2001, the original nine complaining parties requested the establishment of a panel, which was established on August 23. On September 10, 2001, a panel was established at the request of Canada and Mexico, and all complaints were consolidated into one panel. The panel is composed of: Mr. Luzius Wasescha, Chair (selected by mutual agreement of the parties); and Mr. Maamoun Abdel-Fattah and Mr. William Falconer, Members (selected by the Director-General). The panel's final report, circulated on September 16, 2002, found that the CDSOA is an impermissible action against dumping and subsidies under the WTO Antidumping and Subsidies Agreements, respectively. It also found that the CDSOA violates the standing provisions of these agreements. The United States appealed the panel's report on October 1, 2002. The Appellate Body issued its report on January 16, 2003, upholding the panel's finding that the CDSOA is an impermissible action against dumping and subsidies, but reversing the panel's finding on standing. The DSB adopted the panel and Appellate Body reports on January 27, 2003. At that meeting, the United States stated its intention to implement the DSB recommendations and rulings.

13. United States—Countervailing duties on certain carbon steel products from Brazil (WT/DS/218)

On December 21, 2000, Brazil requested consultations with the United States regarding U.S. countervailing duties on certain carbon steel products from Brazil, alleging that the Department of Commerce's "change in ownership" (or "privatization") methodology, which was ruled inconsistent with the WTO Subsidies Agreement when applied to leaded steel products from the UK, violates the Subsidies Agreement in this situation as well. Consultations were held on January 17, 2001. Brazil has not yet requested the establishment of a panel.

14. United States—Section 129(c)(1) of the Uruguay Round Agreements Act (URAA) (WT/DS/221)

On January 17, 2001, Canada requested consultations with the United States regarding Section 129(c)(1) of the URAA, and the accompanying Statement of Administrative Action (SAA) at page 1026 of the SAA, alleging that this provision precludes the United States from complying fully with rulings of the WTO Dispute Settlement Body in cases where the United States has acted inconsistently with its WTO obligations with respect to an antidumping or countervailing duty proceeding. Consultations were held on March 1, 2001, and a panel was established at Canada's request on August 23, 2001. The following three panelists were selected by mutual agreement of the parties: Mrs. Claudia Orozco, Chair; and Mr. Edmund McGovern and Mr. Simon Farbenbloom, Members. In a report circulated on July 15, 2002, the panel agreed with the United States that section 129(c)(1) does not mandate WTO-inconsistent treatment or preclude the United States from acting in a WTO-consistent manner. Accordingly, there is no basis for Canada's claims that the provision breaches WTO rules. The DSB adopted the panel's report on August 30, 2002.

15. United States—Antidumping duties on imports of seamless pipe from Italy (WT/DS/225)

On February 5, 2001, the EU requested consultations with the United States regarding antidumping duties imposed by the United States on seamless line and pressure pipe from Italy, complaining about the final results of a "sunset" review of that antidumping order, as well as the procedures followed by the Department of Commerce generally for initiating "sunset" reviews pursuant to Section 751 of the Tariff Act of 1930 and 19 CFR §351. The EU alleges that these measures violate the WTO Antidumping Agreement. Consultations were held on March 21, 2001. The EU has not yet requested a panel.

16. United States—Preliminary determinations with respect to certain softwood lumber from Canada (WT/DS/236)

On August 21, 2001, the United States received from Canada a request for consultations regarding the U.S. Department of Commerce preliminary countervailing duty determination and preliminary critical circumstances determination concerning certain softwood lumber from Canada, as well as section 777a(e)(2)(A) and (B) of the Tariff Act of 1930 (19 U.S.C. 1677f-1(e)(2)(A) and (B)). Canada alleges that these determinations and statutes are inconsistent with the WTO Agreement on Subsidies and Countervailing Measures, and with Article VI of the GATT 1994. Consultations were held the week of September 17, 2001. A panel was established on December 5, 2001. The panel is composed of: Dr. Dariusz Rosati, Chair (selected by the Director-General); and Mr. Robert Arnott (selected by mutual agreement of the parties) and Mr. Gonzalo Biggs (selected by the Director-General), Members.

The panel issued its report on September 27, 2002. In its report, the panel (1) agreed with the United States that the provincial governments' sale of timber from public lands can give rise to a subsidy; (2) agreed with the United States that U.S. laws governing expedited and administrative reviews are not inconsistent with the WTO Subsidies Agreement; (3) found against the United States with respect to the particular methodology that the Commerce Department used to calculate the amount of the subsidy; and (4) found against the United States with respect to the Commerce Department's preliminary determination that critical circumstances exist in this case. The DSB adopted the report of the panel on November 1, 2002. On November 28, 2002, the United States notified the DSB that it had complied with the panel's report because it had already withdrawn the challenged measure.

17. United States—Certain measures regarding antidumping methodology (WT/DS/239)

On September 18, 2001, the United States received from Brazil a request for consultations regarding the *de minimis* standard as applied by the U.S. Department of Commerce in conducting reviews of antidumping orders, and the practice of "zeroing" in conducting investigations and reviews. Brazil submitted a revised request on November 1, 2001, focusing specifically on the antidumping duty order on silicon metal from Brazil. Consultations were held on December 7, 2001. Brazil has not yet requested a panel.

18. United States—Rules of origin for textiles and apparel products (WT/DS/243)

On January 11, 2002, the United States received from India a request for consultations regarding the rules of origin for textiles and apparel products set out in Section 334 of the Uruguay Round Agreements Act, Section 405 of the Trade and Development Act of 2000, and the Customs regulations implementing these provisions. Consultations were held February 7, 2002, and the U.S. responded to outstanding questions at a follow-up meeting on February 28. A second round of consultations were held on March 26. On May 7, 2002, India requested the establishment of a panel, and a panel was established on June 24, 2002. The panel is composed of: Mr. Lars Arnell, Chairman, and Ms. Elizabeth Chelliah and Mr. Don McRae, Members, all selected by mutual agreement of the parties.

19. United States—Sunset review of antidumping duties on corrosion-resistant carbon steel flat products from Japan (WT/DS/244)

On January 30, 2002, the United States received from Japan a request for consultations regarding the Department of Commerce and International Trade Commission determinations in a sunset review of an antidumping duty order on Corrosion Resistant Carbon Steel Flat Products from Japan. Japan raises several concerns, including the automatic initiation of a sunset review without sufficient evidence; the standard used to determine whether to revoke or terminate an order; the use of the original dumping margin; the determination that continued dumping is likely on an order-wide rather than company-specific basis; and the use of "zeroing", a *de minimis* margin of 0.5%, and cumulation. Consultations were held March 14, 2002. Japan requested the establishment of a panel on April 4, 2002, and a panel was established on May 22, 2002. The panel is composed of: Mr. Dariusz Rosati, Chairman, and Mr. David Unterhalter, Member (selected by the Director-General); and Mr. Martin Garcia, Member (selected by mutual agreement of the parties).

20. United States— Provisional antidumping measure on imports of certain softwood lumber from Canada (WT/DS/247)

On March 6, 2002, the United States received from Canada a request for consultations regarding the Department of Commerce's preliminary affirmative determination of sales at less than fair value of certain softwood lumber from Canada. Canada contests the initiation of the investigation, based on concerns about the sufficiency of evidence presented in the petition. Canada further asserts that Commerce, in calculating the margin of dumping, made improper price comparisons between sales in the home market and sales in the U.S. market. Canada also challenges the "zeroing" methodology applied by Commerce. Consultations were held April 5, 2002. Canada has not yet requested a panel.

21. United States—Definitive safeguard measures on imports of certain steel products (WT/DS/248, 249, 251, 252, 253, 254, 258, 259, 274)

On March 7, 2002, the United States received from the European Communities a request for

consultations regarding safeguard measures imposed by the U.S. on certain steel products. On March 20, the United States received similar requests from Korea and Japan, on March 26 a request from China, on April 3 a request from Switzerland, and on April 4 a request from Norway. The parties requested consultations to address what they contend are violations of the Safeguards Agreement and the GATT 1994. The parties challenge several aspects of the determination to impose measures as inconsistent with Articles 2, 3, and 4 of the Safeguards Agreement, as well as the relief granted by the measures as inconsistent with Articles 5, 7, and 9 of the Safeguards Agreement (Japan and Switzerland do not allege an Article 9 violation). Korea, Japan, China, Switzerland and Norway also allege violations of Articles 8 and 12 of the Safeguards Agreement. The parties further challenge the measures imposed as inconsistent with the most-favored-nation obligations under Article I:1 of the GATT 1994, obligations on the allocation of tariff rate quotas under Article XIII of GATT 1994 (China, Switzerland, and Norway do not allege an Article XIII violation), and the safeguard provisions under Article XIX of GATT 1994. Korea also alleges violations of Article X:3 of GATT 1994 and Article XVI:4 of the WTO Agreement; Japan, China and Norway further assert violations of Article II and Article X:3 of GATT 1994. Consultations were held April 11, 2002. On May 7, the EC requested the establishment of a panel. On May 21, Japan and Korea requested the establishment of a panel. On May 28, China requested the establishment of a panel. On June 3, Switzerland and Norway requested the establishment of a panel. On June 27, New Zealand requested the establishment of a panel. On July 18, Brazil requested the establishment of a panel.

On June 3, a panel was established at the request of the EC. On June 14, panels were established at the request of Japan and Korea, then both panels were combined with the EC panel. The panel is composed of: Mr. Stefan Johannesson, Chairman, and Mr. Mohan Kumar and Margaret Liang, Members, all selected by the Director-General.

New Zealand requested consultations on May 14, 2002. Brazil requested consultations on May 21. New Zealand and Brazil allege violations of Articles 2, 3, 4, and 5 of the Safeguards Agreement, as well as Articles I:1 and XIX:1(a) of the GATT 1994. New Zealand further alleges violations of Articles 7, 9, and 12 of the Safeguards Agreement, and Article X of the GATT 1994. Brazil further alleges a violation of Article XVI of the Marrakesh Agreement Establishing the WTO. Consultations were held June 13.

On June 3, 2002, the DSB established a panel at the request of the EC. On June 14, the DSB established panels at the request of Japan and Korea; on June 24, the DSB established panels at the request of China, Switzerland, and Norway; on July 8, the DSB established a panel at the request of New Zealand; on July 29, the DSB established a panel at the request of Brazil. All subsequent panels were consolidated with the EC panel.

Chinese Taipei requested consultations on November 1, 2002. Chinese Taipei alleges violations of Articles 2, 3, 4, and 5 of the Safeguards Agreement, as well as Articles I:1 and XIX:1(a) of the GATT 1994. Consultations were held December 12, 2002.

22. United States—Equalizing excise tax imposed by Florida on processed orange and grapefruit products (WT/DS/250)

On March 20, 2002, the United States received from Brazil a request for consultations pertaining to the "Equalizing Excise Tax" imposed by the State of Florida on processed orange and grapefruit products produced from citrus fruit grown outside the United States. Brazil claims that the application of the tax to imported processed citrus products differs from the tax treatment of domestic citrus and citrus products in several respects, in violation of Articles II:1(a), III:1 and III:2 of GATT 1994. Brazil further claims that the proceeds of the tax are directed, by the Florida statute, to the promotion of Florida citrus and citrus products, with no promotion of imported citrus or citrus products, in violation of Articles III:1 and III:4 of GATT 1994. Consultations were held May 2, 2002, and June 27, 2002. Brazil requested the establishment of a panel on August 16, 2002. The DSB established a panel on October 1, 2002.

23. United States—Final countervailing duty determination with respect to certain softwood lumber from Canada (WT/DS/257)

On May 3, 2002, the United States received from Canada a request for consultations regarding the final affirmative countervailing duty determination by the Department of Commerce. Canada challenges the evidence upon which the investigation was initiated. Canada also claims that Commerce imposed countervailing duties against programs and policies that are not subsidies and not specific within the meaning of the SCM Agreement. Further, Canada alleges that Commerce imposed impermissibly high duties, failed to grant or provide for expedited reviews, and failed to conduct its investigation properly. Consultations were held June 18, 2002. On July 18, 2002, Canada requested the establishment of panel. On August 19, Canada withdrew its original request for the establishment of a panel and submitted a new one. The DSB established a panel on October 1, 2002. The panel is composed of: Mr. Elbio O. Rosselli, Chairman, and Mr. Weislaw Karsz and Mr. Remo Moretta, Members, all selected by the Director-General.

24. United States—Sunset reviews of antidumping and countervailing duty orders on certain steel products from the EC (WT/DS/262)

On July 25, 2002, the United States received from the EC a request for consultations regarding ITC and Commerce determinations made in sunset reviews of the antidumping and countervailing duty orders on corrosion-resistant steel from France and Germany and the antidumping and countervailing duty orders on cut-to-length steel from Germany. The EC request also concerns certain provisions and procedures contained in the Tariff Act of 1930, Commerce's regulations, and Commerce's so-called Sunset Policy Bulletin. The EC raises several concerns, including the alleged presumption of continued dumping or subsidization where a party waives its participation in a Commerce sunset review; the application of a 0.5 percent *de minimis* standard in antidumping sunset reviews; the criteria for conducting a cumulative injury analysis and the decision of the ITC to use a cumulative analysis; the assessment of the likely volume of imports in a sunset review; and the alleged failure of the ITC to use publicly available information as a substitute for missing information. Consultations were

held September 12, 2002.

25. United States— Final dumping determination on softwood lumber from Canada (WT/DS/264)

On September 13, 2002, the United States received from Canada a request for consultations regarding the Department of Commerce's preliminary affirmative determination of sales at less than fair value of certain softwood lumber from Canada. Canada contests the initiation of the investigation, arguing that the petition did not contain sufficient evidence to justify initiation and that the Byrd Amendment precludes an objective examination of the degree of support for the petition. Canada further asserts that Commerce, in calculating the margin of dumping, made improper comparisons between sales in the home market and sales in the U.S. market. Canada also challenges Commerce's conduct of the investigation, arguing that Commerce failed to issue timely decisions and provide reasonable briefing schedules. Consultations were held October 11, 2002. Canada requested the establishment of a panel on December 6, 2002, and the DSB established a panel on January 8, 2003.

26. United States—Subsidies on upland cotton (WT/DS/267)

On September 27, 2002, the United States received from Brazil a request for consultations pursuant to Articles 4.1, 7.1 and 30 of the *Agreement on Subsidies and Countervailing Measures*, Article 19 of the *Agreement on Agriculture*, Article XXII of the *General Agreement on Tariffs and Trade 1994*, and Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*. The Brazilian letter requests consultations pertaining to "prohibited and actionable subsidies provided to U.S. producers, users and/or exporters of upland cotton, as well as legislation, regulations, statutory instruments and amendments thereto providing such subsidies (including export credits), grants, and any other assistance to the U.S. producers, users and exporters of upland cotton [footnote omitted]." Brazil claims that these alleged subsidies and measures are inconsistent with U.S. commitments and obligations under the *Agreement on Subsidies and Countervailing Measures*, the *Agreement on Agriculture*, and the *General Agreement on Tariffs and Trade 1994*. Consultations were held December 3-4, 2002. A second round of consultations was held January 17, 2003.

27. United States—Sunset review of an antidumping duty order on oil country tubular goods from Argentina (WT/DS/268)

On October 7, 2002, the United States received from Argentina a request for consultations. Argentina challenges DOC and ITC determinations made in the sunset review of the antidumping duty order on oil country tubular goods from Argentina, as well as the DOC's determination to continue the order. Argentina also identifies as measures sections 751(c) and 752 of the Tariff Act of 1930, the URAA Statement of Administrative Action, the sunset review regulations of the DOC and the ITC, and the DOC Sunset Policy Bulletin. The specific concerns raised by Argentina are: (1) the DOC's evidentiary standard for initiating a sunset review; (2) the DOC's use of a 0.5 percent *de minimis* standard, as opposed to the 2 percent standard for investigations;

(3) the DOC's application of the "likelihood" standard; (4) the U.S. standard for determining whether continued or recurring injury is "likely"; (5) the alleged failure by the ITC to conduct an "objective examination"; and (6) the statutory provisions addressing the time period within which the ITC is to assess the likelihood of continued or recurring injury. Argentina alleges violations of various provisions of the Antidumping Agreement, GATT 1994 and Article XVI:4 of the WTO Agreement. Consultations were held November 14, 2002.

28. United States—Final injury determination on softwood lumber from Canada (WT/DS/277)

On December 20, 2002, Canada requested consultations with the United States on the USITC's final determination in its investigations concerning softwood lumber from Canada. The Commission determined that an industry in the United States is threatened with material injury by reason of imports from Canada found to be subsidized and sold in the United States at less than fair value. Canada alleges four flaws in the ITC's determination: (i) basing threat determination on "allegation, conjecture, and remote possibility"; (ii) failing to establish that circumstances that would covert threatened injury into actual injury are "clearly foreseen and imminent"; (iii) "failing to properly consider all factors relevant to determining the existence of a threat of material injury"; and (iv) failing to properly consider the impact of dumped and subsidized imports on the domestic industry. More generally, Canada alleges that the ITC's report lacked "sufficient detail, relevant information and considerations, and proper reasons." Consultations were held January 22, 2003.

29. United States—Countervailing duties on steel plate from Mexico (WT/DS/280)

On January 21, 2003, the United States received a request for consultations from Mexico. Mexico is challenging the imposition of countervailing duties in an administrative review of a countervailing duty order on carbon steel plate in sheets from Mexico. Mexico alleges that the Department of Commerce used a WTO-inconsistent methodology – the "change-in-ownership" methodology – to determine the existence of countervailable benefits bestowed on a Mexican steel producer. Mexico alleges inconsistency with various articles of the WTO Agreement on Subsidies and Countervailing Measures. Consultations are being scheduled.

II. NAFTA - CHAPTER 20

A. Proceedings in which the United States is a plaintiff

No current actions.

B. Proceedings in which the United States is a defendant

1. Mexico—Sugar TRQ

On March 13, 1998, Mexico requested consultations with the United States under NAFTA Chapter 20 concerning the implementation of the U.S. TRQ on sugar. Consultations were held on April 15, 1998. On January 7, 1999, Mexico requested a meeting of the NAFTA Commission on this issue, and the meeting was held on November 17, 1999. Mexico then requested the formation of a Chapter 20 panel on August 18, 2000.

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